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NOTES

PRACTICING MEDICINE WITHOUT AUTHORITY.

The majority of the States in this country have statutes regulating and defining the requisites necessary for the practice of medicine. This article will be confined to those statutes which, in effect, are that no person will be permitted to "practice medicine" who has not obtained a State license.

The question that naturally arises is what constitutes "practicing medicine"? To answer this question it will be necessary to discuss the legal status of the numerous so-called practitioners who are "practicing medicine" today.

The advent of Christian Science healers has caused much litigation in the different courts. As a result, the courts have construed the statutes of their States in two different ways. When statutes do not strictly define what constitutes "practicing medicine," courts have held that healers can practice without a license.¹ However, in those States where the meaning of the term "practicing medicine" has been extended to cover all treatment for the cure of physical or mental ailments, healers are held to be within the statute.² The first view is well illustrated by the case of *People v. Cole*.³ Defendant, a Christian Science healer, gave a patient a treatment by interposing with God by prayer that the disease, or in harmony between the Divine Being and sufferer, might be adjusted. It was a tenet of his faith that such prayer would completely cure any disease. It was held that as the healer was practising in good faith the tenets of the church, he would not be guilty of violating the statute.

Likewise, the practice of osteopathy has caused a conflict. In some states where the statute merely regulates the "practice of medicine," these words are construed to mean the mere administering of drugs, or use of surgical instruments, and thus not including osteopathy.⁴ On the other hand, some

1. *Kansas City v. Baird*, 92 Mo. App. 204.

2. *State v. Bushwell*, 40 Neb. 158.

3. 219 N. Y. 198.

4. *Smith v. Lane*, 24 (Hun) N. Y. 632.

States hold that the legislative intent was to include all who practice the healing art, whatever treatment they employed, and therefore the practice of osteopathy is within the statute.⁵ An interesting case on this subject is that of *State v. Chase*.⁶ Defendant, an osteopath, had a sign on the outside of her building which read, "Dr. J. J. C. Osteopathic Physician." The court held that she was guilty of violating a statute which made it illegal for a person other than a physician or surgeon to use the word "Dr.," and also that her sign did not convey the impression that she was a legal practitioner of medicine.

In many States it is provided that any person shall be held as practicing medicine within the meaning of a statute prohibiting the practice of medicine, if he shall use the prefix, "Dr.," or "Professor", or append the letters "M. D." to his name. In *People v. Phippen*,⁷ it was held that a sign which read, "Dr., Magnetic Healer," was evidence of the defendant's holding himself out as a medical practitioner. The case of *People v. Smith*,⁸ was a case similar to the above. Defendant kept an office for healing the sick, the sign on his window reading, "Prof. S., Healer." He claimed that his treatment was a gift from God and that he could cure any disease known. It was held that he was "practicing medicine" in violation of a statute. In *State v. Lawson*,⁹ an interesting question arose. Defendant had a method of "cure" in which he treated by hypnotism and massages. It was held

5. 134 Ala. 165.

6. 76 N. H. 553.

7. 70 Mich. 6.

8. 51 Colo. 270.

9. 65 Atl. 593.

that as he did not engage in the business of prescribing remedies for the cure of bodily diseases, he did not need a license to "practice." But in *State v. Peters*,¹⁰ the court decided a similar case oppositely. In this case defendant treated patients by rubbing the parts of the body that were affected. It was held that he was "practicing medicine" according to the statute. Again we find in *Bennett v. Ware*,¹¹ that a person who professed to "cure" by laying his hands on the portion of the body affected by pain and thus cure by prayers, was not guilty of "practicing medicine."

In numerous jurisdictions, chiropractors are completely barred from practicing. In those States where there is no statute prohibiting their practise, a profuse amount of litigation has arisen as to whether a chiropractor practices medicine. In *State v. Zehman*,¹² the court held that defendant, who practiced medicine by the methods prescribed by the chiropractic school, was guilty of "practicing medicine." In *State v. Hefferman*,¹³ we find a somewhat contrary view. The court says, the words "practice of medicine," as used in the statutes, must be construed to relate to the practice of medicine as ordinarily and popularly understood.

According to the weight of authority, the practice of other branches of medicine such as ophthalmology, midwifery, obstetrics, administering patent medicines or selling medicinal mechanical appliances, are considered as "practicing" within

10. 87 Kan. 275.

11. 61 S. E. 546.

12. 157 Iowa 554.

13. 28 R. I. 20.

the statutes. These regulations are entirely statutory and differ to some extent in every jurisdiction. I have endeavored to give illustrations of the generally accepted views, and also to point out the conflicts that have arisen in construing these statutes.

DIKRAN C. SEROPYAN, '26.